

REMARKS

Claims 1-5, 13-22, and 31-34 are presently pending in the case. Claim 1 has been amended. The amendments are supported by the specification and claims as originally filed.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Resubmission of Amendment

The above amendments were made to the claims in the response Applicant submitted on June 5, 2003. It is unclear if the amendments have been entered and considered. Accordingly, the amendments are being resubmitted in this response.

Claim rejections under 35 USC 102

The Examiner rejected claims 1-4 under 35 USC 102(b) as being anticipated by U.S. Patent 3,967,761 to Melton, Jr. (hereinafter Melton, Jr.). The rejection is traversed.

Melton, Jr. does not anticipate claim 1, for example. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1 is to a receptacle comprising, inter alia, a receptacle body that defines an enclosed cavity containing powder medicament. Melton, Jr. does not disclose a receptacle containing powder medicament. Therefore, Melton, Jr. does not anticipate claim 1 and does not anticipate claims 2-4 which depend from claim 1. Thus, the Examiner is respectfully requested to reconsider the language of claim 1-4 and withdraw the rejection thereunder.

The Examiner statement that "Melton, Jr. is fully capable of holding fine powder medicament" does not amount to anticipation. In amended claim 1, Applicant has positively recited, rather than functionally recited, the powder medicament. Therefore, an anticipating reference must explicitly or inherently disclose the powder medicament. Melton, Jr. does not. Thus, Melton, Jr. does not anticipate claim 1.

Furthermore, Applicant disagrees with the Examiner's characterization that Melton, Jr. is capable of holding medicament. Melton, Jr. is related to combustion processes and is not related to pharmaceutical products. Therefore, the materials of Melton, Jr. are not disclosed as being materials that are pharmaceutically acceptable materials. One of ordinary skill in the powder medicament art would not find the receptacles of Melton, Jr. to be capable of holding powder medicament. For this additional reason, claim 1 is patentable over Melton, Jr.

Allowable Subject Matter

Applicant appreciated the indication that claim 5 is allowable. Claims 13-22, and 31-34 have not been rejected and are also presumed to include allowable subject matter.

Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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